

IP 04-0103-CR 1 B/F USA v Smith
Magistrate Kennard P. Foster

Signed on 3/14/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

USA,)	
)	
Plaintiff,)	
vs.)	
)	
SMITH, COREY D,)	CAUSE NO. IP04-0103-CR-01-B/F
)	
Defendant.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 04-103-CR-01 (B/F)
)	
COREY D. SMITH,)	
)	
Defendant.)	

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable Sarah Evans Barker, Judge, on February 24, 2006, designating this Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision filed with the Court on February 24, 2006, and to submit to Judge Barker proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e).

Proceedings were held on March 2, 2006 and March 9, 2006 in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. At all proceedings, Mr. Smith appeared in person with his appointed counsel, William Dazey, Office of the Indiana Federal Community Defender; the government appeared by J. P. Hanlon, Assistant United States Attorney; and U. S. Parole and Probation appeared by Diane Bell, U. S. Parole and Probation officer, who participated in the proceedings.

On March 2, 2006, the Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. William Dazey, Office of Indiana Federal Community Defender, was present and appointed by the Court to represent Mr. Smith in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Mr. Smith and his counsel who informed the Court that they had read and understood the specification of violations and waived further reading thereof.

3. Mr. Smith was advised of his right to a preliminary hearing and its purpose in regard to the alleged specified violations of his supervised release contained in the pending Petition.

4. Mr. Smith would have a right to question witnesses against him at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. Mr. Smith had the opportunity to appear at the preliminary hearing and present evidence on his own behalf.

6. If the preliminary hearing resulted in a finding of probable cause that Mr. Smith had violated an alleged condition or conditions of his supervised release set forth in the Petition, he would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Barker's designation entered on February 24, 2006.

7. Mr. Dazey stated that Corey D. Smith would stipulate there is a basis in fact to hold him on the specifications of violation of supervised release set forth in the Petition. Mr. Smith executed a written waiver of the preliminary examination, which was accepted by the Court.

8. The parties agreed to continue further proceedings until March 9, 2006. The proceedings were then adjourned pending the revocation hearing on March 9, 2006. The defendant was detained, pending further proceedings.

On March 9, 2006, the Court reviewed prior proceedings held March 2, 2006, including defendant's right to a preliminary hearing. Mr. Smith appeared in person with his court-appointed counsel, William Dazey. The government appeared by J. P. Hanlon, Assistant United States Attorney; and Diane Bell, U. S. Parole and Probation officer, appeared and participated in the proceedings. The following proceedings occurred:

1. Mr. Smith, by counsel, stipulated that he committed specifications of violations set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed with the Court on February 24, 2006 as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>“The defendant shall reside for a period no longer than four months at a community corrections center as directed by the probation officer and shall observe the rules of that facility.”</p> <p>On February 22, 2006, the offender reported to Volunteers of America as instructed; however, he chose to leave the facility shortly thereafter. Offender repeatedly commented he would “bust someone if he stays.”</p>
2	<p>“The defendant shall refrain from any unlawful use of a controlled substance.”</p> <p>As reported to the Court in previous violation reports, the offender submitted urine specimens, which tested positive for cocaine on November 15, 2005, December 13, 2005, and January 11, 2006. In addition, on January 12, 2006, January 23, 2006, February 8, 2006, and February 16, 2006, the offender submitted dilute urine samples, which tested negative for substance abuse and indicated an abnormal creatinine level.</p>

- 3 **“The defendant shall participate in a program of testing and/or treatment for substance abuse and shall pay a portion of the fees of treatment as directed by the probation officer.”**

On November 27, 2005; January 5, 2006; January 8, 2006; January 15, 2006; January 17, 2006; January 19, 2006; January 31, 2006; February 4, 2006; and February 14, 2006, the offender failed to report to Volunteers of America for random urinalysis testing as required.

- 4 **“The defendant shall participate in a program of mental health treatment as directed by the probation officer.”**

On February 17, 2006, the offender failed to report to Universal Behavioral Services Community Mental Health Center for treatment as required. In addition, the offender’s counselor at the center for Behavioral Change reported to this officer that offender’s lack of attendance for treatment is problematic.

The parties stipulated the following in open Court:

(1) Mr. Smith and the government agreed they were ready to proceed to disposition on the pending Petition to REVOKE Mr. Smith’s supervised release in open Court this date.

(2) Mr. Smith admitted that he committed the violations of specifications set forth in the Petition to Revoke Supervised Release stated above.

(3) Mr. Smith has a relevant criminal history category of V. *See*, U.S.S.G. §7B1.4(a).

(4) The most serious grade of violation committed by Mr. Smith constitutes a Grade B violation, pursuant to U.S.S.G. §7B1.1(b).

(5) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release the range of imprisonment applicable to Mr. Smith is 18 to 24 months.

(6) The parties agree that the appropriate disposition of the case would be revocation of Mr. Smith’s supervised release and that he be sentenced to the custody of the Attorney General or his designee for a period of one year and one day. Further, upon release from confinement, Mr. Smith will be subject to supervised release for one year.

The Magistrate Judge informed the defendant and the parties' respective counsel that the Magistrate Judge would accept the parties' stipulations.

The Magistrate Judge recommends that Mr. Smith participate in an intensive mental health and drug abuse treatment and/or counseling program while in custody. It is further recommended that Mr. Smith be designated to the Federal Correctional Institution located at Coleman, Florida.

2. The Court then placed Mr. Smith under oath and inquired directly of him whether he admitted committing violations of supervised release contained in the Petition. Mr. Smith admitted the violations.

The Court, having heard the admissions of the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant, Corey D. Smith, violated the above-delineated conditions in the Petition.

Mr. Smith's supervised release is therefore **REVOKED** and he is sentenced to the custody of the Attorney General or his designee for a period of one year and one day. The service of the sentence shall begin immediately. At the conclusion of Mr. Smith's term of confinement, he will be subject to supervised release for a period of one year, under the conditions of supervision previously imposed by the Court at the time of his original sentence. The Magistrate Judge recommends Mr. Smith participate in intensive mental health and drug abuse treatment and/or counseling while incarcerated.

The Magistrate Judge requests that Diane Bell, U. S. Parole and Probation officer, prepare for submission to the Honorable Sarah Evans Barker, District Judge, as soon as practicable, a supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

Counsel for the parties and Mr. Smith stipulated in open Court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72.b, *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U. S. District Court for the Southern District of Indiana*.

You are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge pursuant to Title 28, U.S.C. §636(b)(1)(B) and (C) and Rule 72(b) of the *Federal Rules of Civil Procedure*. You shall have within ten days after being served a copy of this Report and Recommendation to serve and file written objections to the proposed findings of facts and conclusions of law and recommendations of this Magistrate Judge. If written objections to the Magistrate Judge's proposed findings of fact and recommendations are made, the District Judge will make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which an objection is made.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation revoking Mr. Smith's supervised release and imposing a sentence of imprisonment of one year and one day in the custody of the Attorney General or his designee. During his imprisonment, Mr. Smith will participate in an intensive mental health and substance abuse treatment and/or counseling. It is recommended that Mr. Smith be designated by the Bureau of Prisons at the Federal Correctional Institution located in Coleman, Florida. Further, that upon Mr. Smith's release from confinement, he will be subject to a term of supervised release of one year under the conditions of supervision previously imposed by the Court at the time of his original sentence.

IT IS SO RECOMMENDED this 14th day of March, 2006.

Kennard P. Foster, Magistrate Judge
United States District Court

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